

ASSEMBLY, No. 3958

STATE OF NEW JERSEY 219th LEGISLATURE

INTRODUCED MAY 1, 2020

Sponsored by:

Assemblywoman CAROL A. MURPHY

District 7 (Burlington)

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District 12 (Burlington, Middlesex, Monmouth and Ocean)

SYNOPSIS

“The Peter Falk Act”; establishes certain requirements concerning access to persons subject to order of guardianship.

CURRENT VERSION OF TEXT

As introduced.



(Sponsorship Updated As Of: 5/1/2020)

1 AN ACT concerning guardianship arrangements and supplementing
2 chapter 12 of Title 3B of the New Jersey Statutes.

3
4 **BE IT ENACTED** *by the Senate and General Assembly of the State*
5 *of New Jersey:*

6
7 1. a. Unless specifically authorized by court order, a guardian
8 shall not restrict a ward's right of communication, visitation, or
9 interaction with other persons, including the right to receive visitors,
10 telephone calls, and personal mail. If a ward is unable to express
11 consent to communication, visitation, or interaction with a person
12 because of the ward's physical or mental condition, the ward's
13 consent may be presumed based on a prior relationship between the
14 ward and the person.

15 b. (1) A guardian may petition the court to place restrictions on
16 any person's ability to communicate, visit, or interact with a ward.
17 The court may grant the petition upon finding good cause exists to
18 impose the restrictions, including, but not be limited to:

19 (a) the existence of a protective order issued to protect the ward
20 from the person seeking access to the ward;

21 (b) a finding by a court or other State agency that the person
22 seeking access to the ward abused, neglected, or financially exploited
23 the ward; or

24 (c) the ward's express desire to reject communication, visitation,
25 or interaction with the person.

26 (2) In considering a petition filed pursuant to paragraph (1) of this
27 subsection, the court shall consider whether the ward has expressed
28 a preference for communication, visitation, or interaction with the
29 person. If the ward is unable to communicate, the court may consider
30 the prior relationship history between the ward and the person and
31 any documentation of the ward's preferences, including, but not
32 limited to, any preferences expressed in a living will, durable power
33 of attorney, or advance directive.

34 (3) An order granted pursuant to this subsection may:

35 (a) impose reasonable time, manner, or place restrictions on
36 communication, visitation, or interaction with the ward;

37 (b) include a requirement that communication, visitation, or
38 interaction be supervised by a third party specified by the court; or

39 (c) prohibit communication, visitation, or interaction with the
40 ward.

41 Unless the court finds that the person poses a threat to the ward,
42 supervised communication, visitation, or interaction shall be ordered
43 prior to the denial of any communication, visitation, or interaction.

44 c. (1) If any interested person, including the ward, reasonably
45 believes that a violation of subsection a. of this section or an order
46 issued pursuant to subsection b. of this section has occurred, the
47 person may petition the court to:

48 (a) require the guardian to grant a person access to the ward;

- 1 (b) restrict, or further restrict, a person's access to the ward;
- 2 (c) modify the guardian's duties; or
- 3 (d) remove and replace the guardian.

4 (2) Notwithstanding paragraph (1) of this subsection, if the court
5 finds the ward's guardian knowingly isolated the ward, violated
6 subsection a. of this section, or violated an order issued pursuant to
7 subsection b. of this section, the court shall remove and replace the
8 guardian and may order any other appropriate relief.

9 d. (1) Except as provided in paragraph (2) of this subsection,
10 the court shall schedule a hearing on a petition filed pursuant to
11 subsections b. or c. of this section no later than 60 days after the date
12 the petition is filed. The court may, in its discretion, order mediation
13 to be conducted by the parties and the ward prior to the hearing. If
14 mediation results in an agreement concerning communication,
15 visitation, or interaction, the agreement shall not be valid unless
16 approved and memorialized in a court order.

17 (2) If the petition states that the ward's health is in significant
18 decline or that the ward's death may be imminent, the court shall
19 conduct an emergency hearing as soon as practicable, but no later
20 than 10 days after the petition is filed. When a scheduling order is
21 issued upon a petition filed under this paragraph, the court shall order
22 that supervised communication, visitation, or interaction with the
23 ward be granted during the period prior to the hearing.

24 (3) Notice of the hearing, a copy of the petition, and a copy of
25 any order issued pursuant to paragraph (2) of this subsection shall be
26 personally served upon the ward and any person against whom the
27 petition is filed. Nothing in this paragraph shall affect the ward's
28 right to appear and be heard in the proceedings.

29 e. The court may, in its discretion, award the prevailing party in
30 any action brought under subsections b. or c. of this section court
31 costs and reasonable attorney's fees. An award of court costs or
32 attorney's fees shall not be paid out of the ward's estate.

33

34 2. a. A guardian shall promptly notify a ward's parents, adult
35 children, and any other person designated by the ward to receive
36 notice in the event that:

- 37 (1) the ward's residence has changed;
- 38 (2) the ward is staying at a location other than the ward's
39 residence for more than seven consecutive days;
- 40 (3) the ward is admitted to a medical facility for acute care for a
41 period of three or more days, or for emergency care in response to a
42 life-threatening injury or medical condition; or
- 43 (4) the ward dies.

44 Notice of the ward's death shall be made in person or by
45 telephone, and shall include details concerning funeral arrangements
46 and the place of burial or other final disposition.

47 b. Notice provided pursuant to subsection a. of this section shall
48 include appropriate contact information for the ward, except that no

1 contact information shall be provided if, at the time notice is
2 provided, there is a protective order in place which was issued on
3 behalf of the ward against the person receiving the notice.

4 c. A guardian shall not be required to provide notice pursuant to
5 this section if:

6 (1) a person who is entitled to notice under subsection a. of this
7 section informs the guardian, in writing, that the person does not wish
8 to receive such notice; or

9 (2) the guardian has been expressly prohibited from providing
10 notice to the person by the ward or by a court order.

11
12 3. This act shall take effect immediately and shall apply to a
13 guardianship created before, on, or after the date of enactment.

14
15
16 STATEMENT

17
18 This bill, which will be known as “The Peter Falk Act,” establishes
19 certain requirements concerning access to a person who is the subject
20 of an order of guardianship, also known as a “ward.”

21 Specifically, the bill provides that a guardian may not restrict a
22 ward’s right of communication, visitation, or interaction with other
23 persons, including the right to receive visitors, telephone calls, and
24 personal mail, unless specifically authorized by a court order. If a
25 ward is unable to express consent to communication, visitation, or
26 interaction with a given person, the ward’s consent may be presumed
27 based on the ward’s prior relationship with the person.

28 A guardian may petition the court to restrict any person’s access
29 to a ward, including requiring time, manner, or place restrictions;
30 imposing supervised access; or prohibiting communication,
31 visitation, or interaction with the ward. The court may grant the
32 petition upon finding good cause exists to impose restrictions,
33 including, but not be limited to: the existence of a protective order on
34 the ward’s behalf against the person seeking access; a finding by a
35 court or other State agency that the person seeking access abused,
36 neglected, or financially exploited the ward; or the ward’s express
37 desire to reject communication, visitation, or interaction with the
38 person. Unless the court finds that the person seeking access poses a
39 threat to the ward, supervised communication, visitation, or
40 interaction is to be ordered prior to a denial of communication,
41 visitation, or interaction. In considering the petition, the court will
42 be required to consider whether the ward has expressed a preference
43 for communication, visitation, or interaction with the person. If the
44 ward is unable to communicate, the court may consider the prior
45 relationship history between the ward and the person and any
46 documentation of the ward’s preferences.

47 Additionally, if any interested person, including the ward,
48 reasonably believes that a guardian has impermissibly restricted

1 communication, visitation, or interaction with the ward, or that any
2 person has violated a court order restricting communication,
3 visitation, or interaction, the person may petition the court for
4 appropriate relief, including requiring the guardian to grant access to
5 the ward; restricting a person's access to the ward; modifying the
6 guardian's duties; or removing and replacing the guardian. In any
7 case, if the court finds the guardian knowingly isolated the ward,
8 restricted access to the ward, or violated a court order restricting
9 access to the ward, the court will be required to remove and replace
10 the guardian, and will be permitted to order any other appropriate
11 relief.

12 The bill requires that a hearing on a petition filed under the bill be
13 scheduled no later than 60 days after the date of filing; except that, if
14 the ward's health is in significant decline or the ward's death is
15 imminent, the court will be required to schedule an emergency
16 hearing no later than 10 days after the petition is filed. In the case of
17 an emergency petition, the court will be required to issue an order
18 granting supervised access to the ward during the period prior to the
19 hearing. In the case of a non-emergent petition, the court may order
20 the parties to undergo mediation; however, any mediation agreement
21 the parties reach will require court approval to take effect.

22 On any petition filed under the bill, the court will be permitted to
23 award the prevailing party court costs and reasonable attorney's fees,
24 which may not be paid out of the ward's estate.

25 The bill additionally requires guardians to promptly notify a
26 ward's parents, adult children, and any other person designated by
27 the ward to receive notice in the event that: (1) the ward's residence
28 has changed; (2) the ward is staying at a location other than the
29 ward's residence for more than seven consecutive days; (3) the ward
30 is admitted to a medical facility for acute care for a period of three or
31 more days or for emergency care in response to a life-threatening
32 injury or medical condition; or (4) the ward dies. Unless the ward
33 has a protective order in place against the person receiving notice,
34 the guardian is to include appropriate contact information for the
35 ward. Notice of the ward's death is to be made in person or by
36 telephone and is to include details concerning funeral arrangements
37 and the place of burial or other final disposition. A guardian will not
38 be required to provide notice if the guardian has been expressly
39 prohibited from providing notice to the person by the ward or by a
40 court order, or if the person entitled to notice requests, in writing, not
41 to receive notice.

42 The bill would apply to any guardianship order issued before, on,
43 or after its effective date.

44 This bill is similar to laws recently enacted in Texas and Iowa and
45 legislation introduced in Tennessee.